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Sirs/Madams/Distinguished Legislators:

I wish to address you on Proposed Bill 5704, An Act Concerning Mandatory Voting. I address you as a citizen of Connecticut for 50 years, as a practicing attorney in Connecticut for 47 years, and as a former adjunct professor of Constitutional Law at St. Joseph College in West Hartford. Whereas I applaud the efforts of the General Assembly to ". . . incentivize civic engagement," I vehemently oppose this proposed legislation.

This proposed legislation has obvious flaws related to enforcement, citizen inconvenience and the like. I anticipate that many others will address these flaws in testimony before this committee. I will leave it to them to express their minds on these issues. I wish to address only the constitutional infirmities contained in this proposed legislation.

At the core of our fundamental freedoms in the United States stands our First Amendment. Most of us think of the First Amendment as a constitutionally guaranteed right of, among other things, assembly and free speech. The First Amendment has been broadly defined by the United States Supreme Court as a guarantee of many things that go beyond the mere utterance of words or the gathering of people. It has consistently held that the protection of the First Amendment covers protection against compelled speech or compelled assembly. This bill, if passed, would compel citizens to assemble and speak through participation at the ballot box.

As early as 1943 in ***West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943)***, the Supreme Court addressed the right of the State to compel students to salute the flag (clearly a nonverbal act) and to recite a pledge to the flag. The Court, with one dissent, ruled that compelling a student to salute the flag violated that student's First Amendment rights. Writing for the Court Justice Jackson stated:

> To sustain the compulsory flag salute we are required to say that a Bill of Rights which guards the individual's right to speak his own mind, left it open to public authorities to compel him to utter what is not in his mind. ***(319 U.S. at 634.)***

In concluding, Justice Jackson said:

> If there is any fixed star in our constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.
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> We think the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is

the purpose of the First Amendment to our Constitution to reserve from all official control. (319 U.S. at 642.)

The Court declined to sanction the compulsion of a nonverbal act to "incentivize" participation in an homage to generally regarded positive civic values. If asked, even today's conservative leaning Supreme Court would surely decline to sanction compulsory participation in the electoral arena.

In ***Riley v. National Federation of the Blind of North Carolina, Inc., 487 U.S. 781 (1988)***, the Supreme Court addressed the constitutionality of a North Carolina law that put limits on the fees professional fundraisers could charge the charities they served. As is the case with Proposed Bill 5704, this law was designed to serve an altruistic purpose. In serving that purpose, however, it was deemed to put limitations on what could or could not be said and what must or must not be said by professional fundraisers. In striking down the statute the Court noted:

> North Carolina cannot meaningfully distinguish its statute from those previously held invalid on the ground that it has a motivating interest, not present in the prior cases, to ensure that the maximum amount of funds reach the charity, or to guarantee that the fee charged charities is not unreasonable. This provision is not merely an economic regulation, with no First Amendment implication, to be tested only for rationality; instead, the regulation must be considered as one burdening speech. The State's asserted justification that charities' speech must be regulated for their own benefit is unsound. The First Amendment mandates the presumption that speakers, not the government, know best both what they want to say and how to say it. ***(487 U.S. at 782)***

Later in its decision the Court states that:

> North Carolina asserts that, even so, the First Amendment interest in compelled speech is different than the interest in compelled silence; the State accordingly asks that we apply a deferential test to this part of the Act. There is certainly some difference between compelled speech and compelled silence, but in the context of protected speech, the difference is without constitutional significance, for the First Amendment guarantees "freedom of speech," a term necessarily comprising the decision of both what to say and what *not* to say . . . . In reaching our conclusion, we relied on the principle that "[t]he right to speak and the right to refrain from speaking are complementary components of the broader concept of 'individual freedom of mind'". ***(487 U.S. at 796-97, internal citations omitted)***

In 2018 in ***Janus v. American Federation of State, County, and Municipal Employees, Council 31, 138 S.Ct. 2448 (2018)***, the Supreme Court addressed the issue of whether an employee could be required to join a union or, more specifically, pay union dues to a union that espoused policies and political goals not subscribed to by the employee. In striking down the requirement the Court stated:

> Free speech serves many ends. It is essential to our democratic form of government, and it furthers the search for truth. Whenever the Federal Government or a State prevents individuals from saying what they think on important matters or compels them to voice ideas with which they disagree, it undermines these ends.
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> When speech is compelled, however, additional damage is done. In that situation, individuals are coerced into betraying their convictions. Forcing free and independent individuals to endorse ideas they find objectionable is always demeaning, and for this reason, one of our landmark free speech cases said that a law commanding "involuntary affirmation" of objected-to beliefs would

require "even more immediate and urgent grounds" than a law demanding silence. ***(138 S.Ct. at 2464, internal citations omitted)***

The statute at issue in ***West Virginia State Board of Education v. Barnette*** had an altruistic goal, but it compelled a (nonverbal) act. It was struck down under First Amendment principles. The statute at issue in ***Riley v. National Federation of the Blind of North Carolina, Inc.*** had an altruistic goal, but it compelled actions (both verbal and nonverbal). It was struck down under First Amendment principles. The statute at issue in ***Janus v. American Federation of State, County, and Municipal Employees, Council 31*** had an altruistic goal, but it compelled a (nonverbal) act. It was struck down under First Amendment principles.

Connecticut is the Constitution State. We are the home of the first known written constitution. The United States Constitution was modeled after Connecticut's Constitution. We take great pride in our leading role in the creation of the United States Constitution. How can you even think of passing such a blatantly unconstitutional law? Do so and the ACLU will have a field day with you. Thank you for your time.

Respectfully submitted,

Leon M. Kaatz